

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BIONTECH SE, BIONTECH
MANUFACTURING GMBH, and
PFIZER, INC.

Plaintiffs,

v.

CUREVAC AG,

Defendant.

CIVIL ACTION NO. 1:22-CV-11202

**CUREVAC AG’S MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION OR TO TRANSFER PURSUANT TO 28 U.S.C. § 1631**

Defendant CureVac AG, a German corporation, moves to dismiss this case on the ground that it is not subject to personal jurisdiction in this District, or to transfer the case under 28 U.S.C. § 1631 to the Eastern District of Virginia, the only district with jurisdiction over CureVac AG pursuant to 35 U.S.C. § 293.

CureVac AG pioneered and patented technologies that led to today’s RNA-based vaccines for COVID-19. Plaintiffs manufacture and market a RNA-based COVID-19 vaccine, and seek declaratory judgment that their vaccine does not infringe three CureVac AG patents. As explained in the accompanying Memorandum of Law, however, CureVac AG is not subject to either general or specific personal jurisdiction in this District. Accordingly, this action should be dismissed for lack of personal jurisdiction.

However, CureVac AG is not seeking to avoid resolution of the parties’ underlying dispute. Under 35 U.S.C. § 293, because CureVac AG is a foreign patentee and is not subject to jurisdiction in any state court of general jurisdiction, it is statutorily subject to jurisdiction in the

Eastern District of Virginia. Consequently, if the Court does not dismiss this case, CureVac moves to transfer under 28 U.S.C. § 1631 to the Eastern District of Virginia, the forum in which Plaintiffs could and should have brought this case.

In support of this motion, CureVac AG submits the accompanying Memorandum of Law, and the supporting declarations of Marco Rau, Frederic Krohn, and Marcus Dalton.

WHEREFORE, defendant CureVac AG respectfully moves for an order dismissing this case, or transferring it to the Eastern District of Virginia.

CUREVAC AG

By its attorneys,

Dated: October 27, 2022

/s/ Michael R. Gottfried
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Attorneys for Defendant CureVac AG

LOCAL RULE 7.1(A)(2) CERTIFICATION

I hereby certify that counsel for defendant CureVac AG conferred with counsel for Plaintiffs before filing this motion in an effort to resolve or narrow the issues. Plaintiffs declined CureVac AG's offer to stipulate to transfer this case to the Eastern District of Virginia.

/s/ Michael R. Gottfried
Michael R. Gottfried

CERTIFICATE OF SERVICE

I, Michael R. Gottfried, hereby certify that on October 27, 2022 I served a copy of the foregoing document via ECF upon all counsel of record.

/s/ Michael R. Gottfried
Michael R. Gottfried